

REMARKS

This amendment responds to the Office action dated June 7, 2005 setting forth a shortened three month statutory period for reply expiring on September 7, 2005. Included herewith is a petition for a one month extension of time to reply, making this response due on or before October 7, 2005. Please consider this a request therefor and authorization to charge Deposit Account 04-1415 accordingly.

In the OA, claims 1-23 are pending, with claims 1, 3, 6, 7, 10, 12, 13, 14, and 15 being independent claims. Claims 1-9, 12, 13 and 15-20 are rejected. Claims 10, 11 and 14 are allowed. Claims 21-23 are objected to as being depen

dent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

By this Amendment, claims 1, 3, 6, 7, 10, and 12-15 have been amended. Amendments to claims 3, 6, 7, 10, 12, 13, and 14 have been solely made to correct inadvertent typographical errors. This paper cancels no claims. Accordingly, claims 1- 23 remain pending after the entry of this Amendment and Response.

I. Rejections Under § 102(b) - Geisler

The Examiner rejected claims 1 and 2 under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 4,809,708 to Geisler et al. ("Geisler"). An anticipation rejection under 35 U.S.C. § 102(b) requires that the cited prior art reference disclose each and every limitation of the claim. For at least the following reasons, the Applicant respectfully submits Geisler does not disclose every limitation of the claims at issue.

Specifically, the Examiner alleges that Geisler discloses a computer controller, loudspeaker, and hearing aid which allegedly anticipate the "stimulus generating means for transmitting at least one true random stimulus sequence to a subject's inner ear," as required by

independent claim 1. The Examiner cites col. 4, lines 50-56 and col. 5, lines 16-24 in support of this allegation. Although the Applicant respectfully submits no portion of Geisler (including those cited by the Examiner) teaches or suggests a true random stimulus, claim 1 is amended herein to require "the at least one true random stimulus sequence comprises at least one signal devoid of a definitive relationship with time." Geisler does not teach or suggest a signal "devoid of a definitive relationship with time." Instead, Geisler discloses frequency chirps or sequences of pure tones as stimuli. See, e.g., Col. 5, lines 16-21. Although the phase of the tonal sequence may have "random phase," (col. 5, line 20), these signals are not "devoid of a definitive relationship with time," as required by independent claim 1. Thus, Geisler does not teach or suggest all of the limitations of independent claim 1.

The Applicant respectfully submits that time varying and time dependent signals such as frequency chirps and sequenced tones are not the same as a signal "devoid of a definitive relationship with time," as required by independent claim 1. Thus, the Applicant submits Geisler cannot anticipate claim 1.

As claim 2 depends from claim 1, claim 2 is likewise patentable over Geisler. The Applicant makes this statement without reference to or waiving the independent bases of patentability within claim 2. The Applicant respectfully requests the Examiner withdraw her rejection and allow the claims.

II. Rejections Under § 103(a): Geisler and Davis

The Examiner rejected claims 3-9 and 12-13 under 35 U.S.C. § 103(a) as being unpatentable over Geisler in view of U.S. Patent No. 6,574,342 to Davis et al. ("Davis"). Referring to independent claims 3, 6, 7, 12, and 13, the Examiner alleged that Geisler teaches all elements of these claims, except for a sampling means for comprising a waveform reconstruction means. To account for the deficient teachings of Geisler, the Examiner alleged

that Davis teaches such a waveform reconstruction means and that the combination of Geisler and Davis render these claims obvious.

A prima facie case of obviousness under 35 U.S.C. § 103 requires that the prior art references must teach or suggest all the claim limitations. For at least the following reasons, the Applicant respectfully submits the combination of cited references does not meet this burden. Davis does not disclose or suggest a reconstruction of a first waveform corresponding to “a response signal returned from [a] subject’s inner ear,” as required by independent claim 3. Rather, Davis discloses generation of a waveform to create tones played into a listener’s ear. In Davis, these tones used for hearing assessment are the output of the hearing aid (col. 3, lines 55-57). Moreover, tones are generated in response to an individual’s manipulation of a user interface to assess and compare dynamic levels across a spectrum of frequency bands to adjust hearing compensation (col. 3, lines 58-65). Thus, the waveforms corresponding to tones in Davis are not “reconstructed waveforms” corresponding to “a response signal” as required by the independent claims. Instead, Davis’ waveforms are generated based on an individual’s input and transmitted into, not “returned from,” a subject’s inner ear. Because Davis does not teach or suggest waveform reconstruction, the combination of Geisler and Davis cannot teach or render obvious the independent claims at issue.

Additionally, Davis teaches away from inner ear testing, and as such at least teaches away from being combined with Geisler. Geisler discloses a probe tube inserted into the ear canal for audiometric purposes. See, e.g., Col. 1, Lines 45-50. More specifically, Geisler teaches testing performed without a hearing aid (col. 5, lines 5-7). Davis requires use of a hearing aid to perform testing (col. 9, lines 40-44). Davis discloses that by using a hearing aid to generate tones, the unique characteristics of the acoustics of an individual’s ear have been accounted for. Therefore, Davis teaches away from being combined with Geisler.

Further, Davis combined with Geisler renders Geisler partially inoperable. Davis requires the use of a hearing aid to perform testing (col. 9, lines 40-44). Geisler teaches testing performed without a hearing aid (col. 5, lines 5-7). One of ordinary skill in the art would not look to Davis to remedy the deficiencies of Geisler with respect to the present application.

For all the foregoing reasons, Davis in combination with Geisler cannot render claims 3, 6, 7, 12, and 13 obvious under 35 U.S.C. § 103.

III. Rejections Under § 103(a): Geisler and Magilen

The Examiner rejected claims 15-20 under 35 U.S.C. § 103(a) as being unpatentable over Geisler in view of U.S. Patent No. 6,674,862 to Magilen ("Magilen"). Referring to independent claim 15, the Examiner alleged that Geisler teaches all elements of this claim, except for a conditioning filter included in the conditioning circuit, as found in claims 15. To account for the deficient teachings of Geisler, the Examiner alleged that Magilen teaches such a conditioning filter and that the combination of Geisler and Magilen render these claims obvious.

Specifically, the Examiner alleges that Geisler teaches a computer controller via the loudspeaker to a hearing aid, which is coupled to a sound delivery tube and directly coupled to a sound transducer (alleged loudspeaker), wherein the loudspeaker generates a first sound wave for input into the ear of the user." The Examiner cited col. 4, lines 50-56 and col. 5, lines 16-24 in support of this allegation.

A prima facie case of obviousness under 35 U.S.C. § 103 requires that the prior art references must teach or suggest all the claim limitations. For at least the following reasons, the Applicant respectfully submits the combination of cited references does not meet this burden. Although the Applicant respectfully submits no portion of Geisler (including those cited by the Examiner) teaches or suggests a true random stimulus, claim 15 is amended herein to require "the electrical stimulus signal [comprising] at least one signal devoid of a definitive

relationship with time." For reasons set forth with respect to claim 1, Geisler does not teach or suggest all of the limitations of amended independent claim 15.

As claims 16-20 depend from claim 15, claims 16-20 are likewise patentable over Geisler. The Applicant makes this statement without reference to or waiving the independent bases of patentability within claims 16-20. Applicant respectfully requests the Examiner withdraw her rejection and allow the claims.

IV. Claim Objections

The Examiner objected to claims 21-23 as being dependent upon a rejected base claim, but indicated that these claims would be allowable if rewritten in independent form. The Applicant thanks the Examiner for this observation, but respectfully submits each of claims 21-23 depend from an independent claim shown above to be patentable. Accordingly, the Applicant respectfully submits that these claims are themselves patentable. The Applicant makes this statement without reference to the independent bases of patentability contained within each dependent claim. The Applicant also reserves the right to rewrite the these claims in independent form.

CONCLUSION

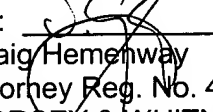
In accordance with the amendments and arguments set forth herein, the Applicant respectfully submits all claims are in condition for allowance, and such prompt allowance is requested.

This Amendment is submitted with a petition for a one-month extension of time in accordance with 37 C.F.R. § 1.136(a). Accordingly, please charge Deposit Account No. 04-1415 in the amount of \$60.00. The Applicant believes that no further fees or petitions are required. However, if any such petitions or fees are necessary, please consider this a request therefore and authorization to charge Deposit Account 04-1415 as required.

Should any issue remain the Examiner believes may be dealt with in a telephone conference, she is invited to contact the undersigned at (303) 352-1124.

Respectfully submitted,

Date: October 7, 2005

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